

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 August 2025

Public Authority: UK Health Security Agency
Address: 10 South Colonnade
London
E14 4PU

Decision (including any steps ordered)

1. The complainant has requested any correspondence received by UK Health Security Agency (UKHSA), when it was previously Public Health England, which were sent or received by the IPC cell. UKHSA provided some information within the scope of the request and advised the remaining was being withheld under section 40(2).
2. The Commissioner's decision is that:
 - On the balance of probabilities, UKHSA has not conducted adequate searches for some of the requested information.
 - UKHSA was only partially entitled to rely on section 40(2) when withholding some of the requested information.
3. The Commissioner requires UKHSA to take the following steps to ensure compliance with the legislation.
 - Conduct a fresh search for the requested information which the complainant referred to in point 3 of their internal review request.
 - Disclose the information which the Commissioner has outlined in a confidential annex.
4. UKHSA must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 10 July 2024, the complainant wrote to UKHSA and requested information in the following terms:

"Please would you provide copies of any emails that PHE sent to or received from the IPC Cell or any of its members in relation to this matter (i.e. making representations about wider use of FFP3 respirators irrespective of AGPs).

If there are any file-notes of conversations made of telephone or teleconferencing calls (or transcripts thereof) then these should be provided as well, provided that this can be achieved within the constraints of the cost threshold associated with FoI requests. This would include any personal notes made by PHE representatives attending the IPC Cell meetings on 22 or 23 December 2020

SCOPE:

The information I seek is not limited to emails from PHE but includes any replies or linked email threads on this subject.

TIME-FRAME: This can be quite narrow as you are not expected to trawl for emails during the whole pandemic. I would suggest from 16 December 2020 (a week before the meeting) to 13 January (a week after the next meeting)."

6. UKHSA responded on 1 October 2024. It provided some information within the scope of the request and explained some was being withheld under with section 40(2).
7. The complainant wrote to UKHSA on 18 October 2024. The complainant then contacted UKHSA again on 20 February 2025 and advised that there appeared to be further information held and not provided by UKHSA. The complainant did so in the following terms:

"1) relating to the email thread: [website redacted]

The email thread starts with an enquiry from NHS-EI.

Various internal emails are exchanged within PHE and the final one appears to be a question to another person which is missing, as is the final reply back to NHS-EI, presuming that there was one.

Please would you locate and forward this email.

2) Relating to this email thread:
[website redacted]

The final email at 16:50 hrs is the official from DHSC telling you that the IPC Cell were over-ruling PHE's recommendation for wider use of FFP3 and that there would be no changes to the PPE recommendations set out in IPC guidance.

The DHSC Official asks where PHE's formal evidenced proposal fits in with that and could this result in changes to the next edition of IPC guidance. Clearly there must have been more email correspondence following on from that email, possibly within PHE itself and most probably a reply to the DHSC official who asked this question.

Please would you locate and supply the missing email(s).

3) Relating to the PHE 'Formal Evidenced Proposal) at this link.
[website redacted]

The email is missing which sent this on to other parties. This falls within the scope of my FoI request and it is important to understand what was subsequently done with this proposal document (i.e. to whom it was sent, and when).

Please would you forward the email(s) which sent it on to (for instance) the Chair of the IPC Cell, maybe all IPC members, and the person in DHSC who was referring to it in the email they sent on 23 December 16:50 which can be found in this thread:
[website redacted]

4) The email from the person who took the notes of the meeting on 22 Dec 2022 and circulated the DRAFT minutes which you provided to another FoI requester at this link:
[website redacted].

For the avoidance of doubt, I am requesting the email which attached those draft minutes, regardless of whether the notes were taken by someone in PHE or (more probably) the IPC Cell Secretariat in NHS England.

5) In the email chain you provided to me on 1 October 2024 at this link:
[website redacted]

in the email dated 22 December 2020 at 20:44, there was mention of "conversations we had on Monday". So any file-notes, emails or other documents relating to those conversations fall within the remit of my FoI request and none have yet been

provided. Please provide them. It is not stated which "Monday" this referred to (21 Dec or 14 Dec 2020).

6) Intrinsically linked with the matters under consideration at the IPC Cell meetings on 22/23 Dec 2020 was the "Formal Evidenced Proposal" (for wider use of FFP3 in healthcare). You helpfully provided this document at this link:
[website redacted]

However you did not provide the emails which accompanied it when it was sent to the IPC Cell and DHSC. Nor any reply from those organisations. They fall within the scope of my request."

8. UKHSA did not issue an internal review.

Scope of the case

9. The complainant contacted the Commissioner on 15 December 2024 to complain about the way their request for information had been handled.
10. During the Commissioner's investigation, UKHSA provided some additional information to the complaint, but denied holding anything further.
11. The complainant advised the Commissioner that they now only had concerns over the application of section 40(2) for the withheld information, and that they believed further information was held in regard to point three.
12. Based on the above, the Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, UKHSA holds any further information within the scope of point three. The Commissioner will then go on to consider whether UKHSA was entitled to rely on section 40(2).

Reasons for decision

Section 1 - general right of access to information

13. This element of the decision notice concerns section 1 of FOIA. Details of this section of FOIA and how it is applied in a decision notice can be found in the Commissioner's [Decision notice support materials](#).
14. UKHSA advised the Commissioner that, in relation to point three, it had contacted its subject expert regarding the request for information.

15. The subject expert was the 'holder of the PHE formal evidence proposal' and had full oversight of the handling of the evidence proposal. This individual confirmed to UKHSA, that they had not undertaken any searches for an email which circulated the PHE formal proposal. They explained that this was because they knew with 'absolute certainty' that the proposal was not sent to other parties.
16. UKHSA explained that, in these circumstances, it was unnecessary and illogical for a further search to be undertaken. It concluded that it had confidence that if any searches were undertaken, information would not be located.
17. Although the Commissioner appreciates the subject expert's knowledge on the matter, UKHSA has disclosed an email to both the Commissioner and the complainant which indicates that a written proposal would be shared with "IPC cell".
18. Despite this email, UKHSA has not provided any additional information showing that the proposal was shared with the IPC cell. The Commissioner therefore does not agree with UKHSA assertion that conducting a search for further information would be "unnecessary and illogical".
19. The Commissioner has therefore concluded that, on the balance of probabilities, UKHSA has not conducted adequate searches for the requested information.
20. The Commissioner requires UKHSA to conduct a fresh search for the requested information, which the complainant has referred to at point three.

Section 40 – personal information

21. This element of the decision notice concerns section 40(2) of FOIA. Details of this section of FOIA and how it is applied in a decision notice can be found in the Commissioner's [Decision notice support materials](#).
22. The Commissioner has first considered whether the withheld information can be categorised as personal data under section 40(2). Personal data is defined as information that relates to a living individual and from which the individual can be identified.
23. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that parts of the withheld information do identify and relate to individuals. This is because it is the names, job titles, work addresses (email addresses and postal addresses) and qualifications of those staff. This is clearly information which both relates to and when combined, identifies those concerned.

24. In addition to the above, UKHSA also withheld staff members' telephone numbers. Whilst in isolation, telephone numbers will not directly identify an individual themselves, if the information were to be combined with the remaining withheld information, these numbers could then lead to identification. Therefore the Commissioner considers that these telephone numbers are personal information too.
25. Although the Commissioner is satisfied that the above information is personal information, he also notes that UKHSA has redacted generic organisation names, email addresses and reference numbers under section 40(2). Having reviewed this information, the Commissioner does not consider this information to be personal data, as it neither relates to nor identifies any individuals. Therefore, this specific information cannot be classed as personal data and is therefore not exempt under section 40(2) of FOIA.
26. The Commissioner will now go on to consider whether disclosure of the information which is personal data would contravene any of the DP principles.

Legitimate interests

27. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
28. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. Having considered the complainant's concerns regarding the application of section 40(2), the Commissioner is satisfied that the complainant has a legitimate interest in the requested information, specifically in relation to UKHSA's level of transparency in this matter.

Is disclosure necessary?

30. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

31. Whilst the Commissioner acknowledges the complainant's concerns relating to transparency, having considered the request, the information already within the public domain and the information disclosed by UKHSA, he is satisfied that it would not be necessary to disclose the withheld information in order for the complainant's legitimate interests to be met.
32. The Commissioner is satisfied that the withheld information would not add any additional value to the request. Due to this, the Commissioner does not deem it necessary to disclose the names, work addresses, telephone numbers, qualifications or job roles of the staff members concerned.
33. As the Commissioner is satisfied that disclosure is not necessary, there is no lawful basis for disclosure and therefore UKHSA was entitled to rely on section 40(2) of FOIA to withhold the information.

The Commissioner's view

34. The Commissioner has decided that, in relation to the names, work addresses, telephone numbers, qualifications and job roles of the staff members, UKHSA was entitled to rely on section 40(2).
35. The Commissioner has also determined that UKHSA was not entitled to rely on section 40(2) when redacting generic organisation names, email addresses and reference numbers.
36. The Commissioner now requires UKHSA to disclose the information which he has outlined within a separate confidential annex. The Commissioner has provided this confidential annex to ensure that his decision does not interfere with UKHSA's rights of appeal.

Other matters

37. The Commissioner would like to take this opportunity to remind UKHSA that he expects timely responses during the course of an investigation. The Commissioner was required to issue an information notice in this case due to delayed responses, which the Commissioner does not consider to be good practice.

Right of appeal

38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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